

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Morgan Tower, Inc.)	File No. EB-01-PA-331
)	
Owner of Antenna Structure)	NAL/Acct. No. 200232400004
Registration # 1060096)	
Cinnaminson, New Jersey)	FRN 0006-3665-04

FORFEITURE ORDER

Adopted: March 7, 2003**Released: March 11, 2003**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Morgan Tower, Inc. (“Morgan”), for willful violation of Section 17.21(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Morgan’s failure to light and adequately paint the captioned antenna structure.

2. On June 19, 2002, the Commission’s Philadelphia, Pennsylvania, District Office (“Philadelphia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Morgan for a forfeiture in the amount of ten thousand dollars (\$10,000).² Morgan filed its response to the NAL on July 19, 2002.

II. BACKGROUND

3. Morgan owns an antenna structure, antenna structure registration (“ASR”) number 1060096, located at 7200 Stenton Avenue in Philadelphia, Pennsylvania (“Stenton Avenue tower”). On November 29, 2001, while inspecting radio apparatus located at the same address, an agent from the Philadelphia Office noticed that the antenna structure had no painting for visibility³ or lighting. The ASR for that antenna structure then indicated and still indicates that the height of the tower is approximately 288 feet above the ground and that painting, top beacon lighting and mid-point lighting are required.

¹ 47 C.F.R. § 17.21(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232400004 (Enf. Bur., Philadelphia Office, released June 19, 2002).

³ The Stenton Avenue tower was painted but apparently only for the purpose of extending the life of the structure, not for visibility.

4. On January 10, 2002, the Philadelphia Office issued a Notice of Violation (“NOV”) to Morgan for violation of Section 17.21(a) of the Rules. In its response to the NOV, filed on February 20, 2002, Morgan asserted, through its contractor, that: “. . . this site . . . originally had been given no hazard status by the FAA. This . . . is the reason the . . . tower wasn’t painted or lit.” The response to the NOV also indicated that Morgan could not locate or obtain a copy of the original no hazard determination and that it had requested a new No Hazard determination by the Federal Aviation Administration (“FAA”).

5. On June 19, 2002, the Philadelphia Office issued a *NAL* for a forfeiture in the amount of \$10,000 to Morgan for failure to paint and light its Stenton Avenue tower, in violation of Section 17.21(a) of the Rules. In its response, filed July 19, 2002, Morgan seeks cancellation of the monetary forfeiture. Morgan argues that the FAA made a No Hazard determination in 1985 exempting the Stenton Avenue tower from the Commission’s painting and lighting requirements. Morgan provides the study number of that determination (85-AEA-0329-OE) but cannot provide a copy and states that the FAA has no record of it. Morgan does provide a copy of the FAA’s No Hazard determination issued on March 25, 2002, which specifically requires painting and lighting. In addition, Morgan argues that it did not act willfully and that it “expeditiously” corrected the violations.⁴

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Morgan’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 17.21(a) of the Rules requires antenna structures to be painted and lighted when they exceed 200 feet in height above the ground. Morgan’s Stenton Avenue tower is subject to this requirement. Morgan contends that a No Hazard determination (85-AEA-0329-OE) by the FAA in 1985 exempted its Stenton Avenue tower from this requirement. Morgan, however, cannot produce a copy of that determination and states that the FAA has no record of it. The Commission’s records, on the other hand, indicate that the Commission assigned painting and lighting requirements to the Stenton Avenue tower on the basis of FAA determination 85-AEA-0329-OE. Further, the Commission’s tower registration data base indicates that Morgan registered the Stenton Avenue tower on January 27, 1999,⁸ assigned ASR number 1060096. The ASR issued to Morgan assigned the Stenton Avenue tower the same painting and lighting requirements as recommended by FAA determination 85-AEA-0329-OE and the

⁴ According to its response to the *NAL*, Morgan completed the installation of tower lighting on or about June 1, 2002.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Only towers having painting and lighting requirements are required to be registered. See Section 17.4 of the Rules, 47 C.F.R. § 17.4.

Stenton Avenue tower's ASR indicates that it still has the same painting and lighting requirements. We conclude that Morgan's Stenton Avenue tower did not have an exemption from the Commission's painting and lighting requirements and that Morgan violated Section 17.21(a) of the Rules by failing to paint and light its tower.

8. Morgan also argues that it did not "willfully" violate the Commission's rules. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission.⁹ It is evident from Morgan's response to the NOV that Morgan made a conscious decision not to paint or light the Stenton Avenue tower.¹⁰ We conclude that Morgan willfully violated Section 17.21(a) of the Rules.

9. Morgan contends that it corrected the violations expeditiously. An observation on January 29, 2003, indicates that Morgan has not painted the Stenton Avenue tower for visibility but instead has installed a white lighting system. Paragraph 36 of FAA Advisory Circular AC 70/7460-1K permits the substitution of white lighting for painting but requires that the Commission be notified. Morgan, however, has not notified the Commission of this substitution and, as a result, the ASR still indicates that painting is required. Morgan, therefore, is not yet in full compliance.¹¹ Furthermore, Morgan's installation of lighting, completed on or about June 1, 2002, cannot be considered expeditious because Morgan had been notified of the painting and lighting violation more than 4 1/2 months earlier, on January 10, 2002. In any event, even if Morgan had expeditiously corrected the violations, no mitigation would be warranted. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹²

10. We have examined Morgan's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Morgan willfully violated Section 17.21(a) of the Rules and find no basis for cancellation or reduction of the proposed \$10,000 monetary forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Morgan **IS LIABLE FOR A MONETARY FORFEITURE**

⁹ Section 312(f)(1) of the Act, 47 USC § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *Nan Tan Computer Co.*, 9 FCC Rcd 3092 (1994).

¹⁰ See Paragraph 4, *supra*.

¹¹ To bring its Stenton Avenue tower into compliance, Morgan must file FCC Form 854 together with a copy of the most recent FAA determination and a statement describing the change in the tower's marking and lighting.

¹² See also *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

in the amount of ten thousand dollars (\$10,000) for failure to light and adequately paint the captioned antenna structure, in willful violation of Section 17.21(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232400004 and FRN 0006-3665-04. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Morgan Tower, Inc., 700 Route 130 N., Suite 204, Cinnaminson, New Jersey 08077.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.